

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 174 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SOMABHAI BHUPATBHAI RATHOD & ORS.

Appearance:

MR MA BUKHARI, APP, for the appellant.

MR YU MALIK for the Respondents.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 09/12/96

ORAL JUDGEMENT (Per Kadri, J.)

The State of Gujarat, by filing this appeal under S.378 of the Code of Criminal Procedure, challenged the judgment and order dated November 28, 1984, passed by the learned 2nd Extra Additional Sessions Judge, Kheda at Nadiad in Sessions Case No. 102 of 1984, whereby the learned Judge has acquitted the respondents for the offences punishable under Ss.333, 332 and 114 of the I.P.Code.

2. The prosecution case may be summarised as under:

Informant Ashokbhai Chaturbhai Chauhan is resident of village Verakhadi, Taluka Anand, Dist.Kheda. He was working in a primary school as teacher since 13 years, prior to the date of the incident. On 27.3.1983, because of Holi festival there was bandobust of police and homeguard in Anand Taluka. The informant was also working in the Homeguard, and therefore, alongwith police personnel he was posted for bandobust in Village Verakhadi. As per the version of the informant, on 28.3.1983, he was on a round of village Verakhadi alongwith other police and homeguard personnel, and when they reached near Indiranagar, accused no.1 approached him and asked him why he was involving accused no.1 in prohibition cases. The informant told that he had never involved accused no.1 in any prohibition case. Thereupon accused no.1 got excited and raised shouts. On hearing the shouts of accused no.1, accused no. 2 to 4 came at the scene of the incident. It is alleged that accused no.1 was having a stick in his hands, and he gave a stick blow on the head of the informant. Accused no.2 also gave a stick blow on the left wrist of the informant and accused no.4 gave a stick blow on the forehead of the informant. It is the case of the informant that Head Constable Kalidas, Husenbhai, Punambhai, Raisinh, Jesingbhai and Ravjibhai Dahyabhai intervened and saved the informant from the attack of the accused persons. It is alleged that the informant was a public servant as he was a member of the homeguard and during discharge of his duties as a public servant, he was assaulted by the accused persons and voluntarily caused grievous hurt to him. An FIR was lodged at Khabholaj Police Station. PSI Mr.N.J.Jhala of Khabholaj Police Station, started investigating and recorded statements of witnesses. The informant was sent to hospital for medical treatment and panchnama of the scene of incident was prepared. After obtaining certificate of the Medical Officer and after completing the investigation, charge-sheet came to be filed for the offences under ss.332, 333 and 114 of the I.P.Code against the respondents, in the court of the learned Judicial Magistrate First Class, Anand. As the

offence under S.333 of the I.P.Code is exclusively triable by Court of Sessions, the case was committed to the Sessions Court, which was numbered as Sessions Case No. 102 of 1984, and was transferred to the Court of the learned 2nd Extra Addl. Sessions Judge, Kheda at Nadiad.

3. Charge Ex. 2 was framed against the respondents for the offences punishable under Ss.332, 333 and 114 of the I.P.Code, which was read over and explained to them. The accused pleaded not guilty to the charge and claimed to be tried.

4. In order to prove the charge against the accused, prosecution examined following witnesses :

PW 1 Ex. 13 Dr.Gaurishanker Banwarilal,
PW 2 Ex. 15 Informant Ashokbhai C. Chauhan,
PW 3 Ex. 17 Maganbhai Shanabhai,
PW 4 Ex. 18 Punambhai Somabhai,
PW 5 Ex. 19 Kalidas Chunilal,
PW 6 Ex. 21 Dr.Virendrakumar Madanlal Vyas,
PW 7 Ex. 26 Husenbhai Raisinhbhai
PW 8 Ex. 27 Ignius John,
PW 9 Ex. 29 PSI Narendrasinh J. Jhala,

In support of its case, the prosecution also produced and relied on documentary evidence such as complaint lodged by the informant, panchnama of the scene of offence, injury certificate of the informant, etc.

5. After recording of the prosecution evidence was over, the respondents were questioned by the learned Judge generally on the evidence produced by the prosecution and their statements came to be recorded under S.313 of the Code of Criminal Procedure, 1973. Defence of the respondents was that they were falsely involved in the case and they have not committed any offence. However, they did not examine any witness in their defence.

6. The learned 2nd Extra Addl. Sessions Judge, after appreciating the evidence led by the prosecution and after hearing the learned advocates for both the sides, recorded the following conclusions :

- (i) Prosecution has failed to prove that on the date and at the time of incident, the informant was a public servant;
- (ii) The oral evidence of informed Ashokbhai does not

inspire confidence as it is not corroborated by medical evidence of Dr.Gaurishanker and Dr.Vyas;

- (iii) Prosecution has failed to prove that the informant had sustained injuries because of the stick blows given by accused no. 1 and 4 on his head;
- (iv) Evidence of eye-witness Maganlal Shanabhai does not inspire confidence because as per his evidence, at the time of the incident, the informant had put on a cap on his head and because of the injuries, the cap was bloodstained. However, the bloodstained cap was not seized by the investigating agency;
- (v) The oral evidence of Dr.Gaurishanker is unreliable because he has narrated the injury sustained by the informant on the basis of his memory, and he has not produced any medical case paper in support of his version;
- (vi) Medical case papers about the injury sustained by the informant were not produced by the prosecution and therefore, the prosecution has failed to establish that the informant had sustained injuries on his person;
- (vii) The oral evidence of the informant and eye-witness Maganlal Shanabhai does not get corroboration from the medical evidence of Dr.Gaurishanker and Dr.Vyas;
- (viii) Prosecution has failed to prove that accused no.2 had intentionally caused injury on the left wrist of the informant by means of a stick blow which resulted in fracture of the wrist;
- (ix) Prosecution has failed to prove that accused no. 3 and 4 have intentionally caused hurt to the informant by means of stick;
- (x) Prosecution has failed to prove that accused no.1 to 4 have aided and abetted each other in causing injuries to the informant while he was discharging his duties as a public servant.

On the basis of the above referred to conclusions, the learned 2nd Extra Addl. Sessions Judge acquitted the accused of the charge framed against them, which has given rise to filing of this appeal by State of Gujarat.

7. Learned APP Mr.MA Bukhari has taken us through the entire evidence produced on the record of the case and has submitted that the learned Judge has erred in not relying upon the evidence of the informant and eye-witness Maganlal. It is submitted that the evidence of the informant and the eye-witness is fully corroborated by the medical evidence of Dr.Gaurishanker and Dr.Vyas. It is submitted that the informant at the relevant time was discharging duty as a public servant and that the respondents had caused injuries on his person by inflicting stick blows, and therefore, they should be convicted for the charges levelled against them, and the appeal should be allowed.

8. Learned Counsel Mr.Y.U.Malik, for the respondents has submitted that the learned 2nd Extra Addl. Sessions Judge has given cogent and convincing reasons for not relying on the evidence of the informant and eye-witness Maganlal as the same was not corroborated by medical evidence of Dr.Gaurishanker and Dr.Vyas. He has submitted that the reasoning and the conclusion of the learned Judge cannot be called perverse or unreasonable so as to warrant interference by this court in this appeal against acquittal, and therefore, the appeal should be dismissed.

9. The argument of the learned APP that the learned 2nd Extra Additional Sessions Judge ought to have relied on the evidence of the informant and the evidence of the eye-witness Maganlal is without any merit, and deserves to be rejected. Evidence of the informant that he was discharging duty as public servant, he being a member of the Homeguard, cannot be accepted. His evidence does not get corroboration from the evidence of other witnesses. Police bandobust was over after the Holi festival and there was no reason for the informant to take round at about 9.30 hours on 28.3.83. Evidence of the informant does not get corroboration from the evidence of other witnesses examined by the prosecution. Therefore, the conclusion arrived at by the learned Judge that prosecution has failed to prove that at the relevant time the informant was discharging duty as a public servant is just and proper, and it does not call for interference. The learned Judge has also given cogent and convincing reasons for not placing reliance on the evidence of Maganlal, as his evidence was full of doubts and was contrary to the medical evidence. Evidence of the informant and the eye-witness does not get corroboration from medical evidence. Dr.Gaurishanker, who had first examined the informant did not produce the injury

certificate and the medical case papers from the Primary Health Centre of village Sarsa. He had only narrated the injuries sustained by the informant on the basis of his memory which was rightly not relied upon by the learned Judge. Evidence of Dr.Vyas who was examined by prosecution with regard to the fracture sustained by the informant also does not establish beyond reasonable doubt that the informant had sustained fracture on his left wrist. The medical case papers produced by the witness also do not suggest that the informant had sustained fracture on his left wrist. Taking into consideration, totality of the prosecution evidence in the nature of eye-witness' version and the medical evidence, it is not proved beyond reasonable doubt that the informant had sustained injuries by means of stick which were caused by accused no. 1 to 4. The reasoning and the conclusion of the learned 2nd Extra Addl. Sessions Judge is quite reasonable and cogent, and he has rightly acquitted the respondents. Therefore, no interference by this court in appeal is called for.

10. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the reasons for acquittal given by the trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & ORS. vs. BIJENDRA NARAIN CHAUDHARY, AIR 1967 SC 1124, and (2) STATE OF KARNATAKA vs. HEMA REDDY AND ANOTHER, AIR 1981 SC 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the accused. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the accused and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge.

11. For the foregoing reasons, we do not see any merits in the appeal, and the appeal is liable to be

dismissed. The appeal therefore, fails and is dismissed.
Muddamal articles are ordered to be disposed of in terms
of the directions given by the learned trial Judge in the
impugned judgment.

abraham.